Abd Khalid bin Abd Hamid v Public Prosecutor

HIGH COURT (KUALA LUMPUR) — CRIMINAL APPEAL NO 42–46–91
ZALEHA ZAHARI JC
19 OCTOBER 1994

Criminal Procedure *— Trial — Close of prosecution case — Duty of court — Maximum evaluation test — Whether prima facie case established — Whether all ingredients of offence proved — Whether mens rea established — Prevention of Corruption Act 1961 s 3(a)(ii)*

Criminal Law *— Prevention of Corruption Act (Malaysia) — Section 3(a)ii — Illegal gratification — Prosecution to establish prima facie case — Whether essential to prove that officer has ability to perform act represented*

Criminal Procedure *— Prosecution witnesses — Co-accused gave evidence implicating appellant — Whether co-accused an accomplice — Whether corroboration needed*

Evidence *— Circumstantial evidence — Securing conviction on — Whether evidence of accused's name in address book of principal offender could be taken into account — Subsequent identification of accused by principal offender — Whether sufficient to link accused with offence — Whether sufficient to prove mens rea*

Evidence *— Corroboration — Co-accused giving evidence on own behalf — Evidence incriminating accused — Whether corroboration required — Whether co-accused regarded as accomplice*

Evidence *— Similar facts — Evidence of association — Whether admissible to rebut possible defence of innocent association — Whether probative value outweighs prejudicial value*

The appellant was a public officer serving in the Ministry of Finance, Malaysia. The prosecution alleged that the appellant abetted one Paramadas, a clerk attached to the Department of Inland Revenue, to corruptly solicit and receive a gratification of RM1,300 from the proprietor of Evergreen Horticulture Nursery and Trading Co ('Evergreen'), as a reward for the appellant to expedite the issuance of an approval letter ('the approval letter') for registration of Evergreen with the Ministry of Finance as one of its contractors, in contravention of s 3(a)(ii) of the Prevention of Corruption Act 1961 ('the Act'), read in conjunction with s 109 of the Penal Code (FMS Cap 45). The appellant was sentenced to ten months' imprisonment and fined RM7,000 in default six months' imprisonment by the sessions court judge. The appellant appealed against his conviction and sentence. Paramadas, who was the second accused, was convicted on a charge under s 3(a)(ii) of the Act, but did not appeal.

The appellant argued, inter alia, that: (i) it was essential for the prosecution to prove that Paramadas was capable of obtaining the approval letter; (ii) although Paramadas was caught red-handed with the trap money, there was no direct evidence to show that the

A appellant received the money; (iii) there was insufficient evidence to show mens rea on the part of the appellant; (iv) the sessions court judge erred in admitting two other letters of approval from the Ministry of Finance to Ferrovic Corp (M) Sdn Bhd and Pengurus Mulpha Trading Sdn Bhd bearing the same date as the approval letter, also signed by the appellant on behalf of the same officer, B which were found with Paramadas as well, as being prejudicial to the appellant and thus infringing the similar fact rule; and (v) the court erred in admitting a statement of Paramadas, the co-accused, which was not corroborated in material particulars.

C **Held**, dismissing the appeal and confirming the sentence imposed:

(1) After having proved that Paramadas was a 'public officer' within the meaning of the Act and that the gratification solicited had been paid and received by Paramadas, it is unnecessary for the prosecution to prove that it was within the power of Paramadas D to do the act represented by him to Evergreen.

(2) Although it would appear that there was no direct evidence implicating the appellant, there was sufficient circumstantial evidence connecting the appellant with Paramadas and the crime. The sessions court judge was right in taking into consideration the appellant's name in Paramadas' address book, the subsequent E identification by Paramadas of the appellant as the man named 'Khalid' in the address book, the positive act of assistance by the appellant in preparation of the approval letter and the recovery of the other letters of approval from Paramadas.

(3) The purpose of adducing evidence of similar facts was justifiable F in this case as the other letters of approval were relevant and probative to show system, and necessary to rebut the possible defence of innocent association as well as identification. They were admissible in evidence as their probative value outweighed their prejudicial value.

G (4) On the issue of mens rea, as there was no direct evidence in this case, the combined strength of all the circumstantial evidence needed to be taken into account. The court was satisfied that the various circumstances pointed irresistibly to the guilt of the appellant.

H (5) Where a co-accused gives evidence on his own behalf against the other co-accused, the co-accused who has given the incriminating evidence is not to be regarded as an accomplice. Thus, corroboration of Paramadas' evidence was not needed. However, this rule applies only to witnesses called for the prosecution.

I **[Bahasa Malaysia summary**

Perayu merupakan seorang pegawai awam yang berkhidmat di Kementerian Kewangan Malaysia. Pihak pendakwa mengatakan bahawa perayu telah bersubahat dengan seorang kerani yang bekerja

di Jabatan Hasil Dalam Negeri bernama Paramadas, untuk meminta dan menerima secara rasuah suapan sejumlah RM1,300 daripada tuan punya Evergreen Horticulture Nursery and Trading Co ('Evergreen'), sebagai balasan untuk perayu mempercepatkan pengeluaran surat kelulusan pendaftaran ('surat kelulusan itu') Evergreen dengan Kementerian Kewangan sebagai salah satu daripada kontraktornya bercanggahan dengan s 3(a)(ii) Akta Pencegahan Rasuah 1961 ('Akta itu'), dibaca dengan s 109 Kanun Keseksaan (NMB Bab 45). Perayu telah menerima hukuman pemenjaraan selama sepuluh bulan dan denda RM7,000 atau pemenjaraan selama enam bulan jika ingkar membayar denda oleh mahkamah sesyen. Perayu telah membuat rayuan terhadap sabitan serta hukumannya. Paramadas, iaitu tertuduh kedua, telah disabitkan atas suatu tuduhan di bawah s 3(a)(ii) Akta itu, tetapi tidak membuat rayuan.

Perayu mengemukakan alasan-alasan, antara lain, bahawa: (i) adalah sangat perlu bagi pihak pendakwa membuktikan bahawa Paramadas adalah berkeupayaan memperolehi surat kelulusan itu; (ii) sungguhpun wang perangkap dijumpai bersama-sama dengan Paramadas apabila dia ditangkap, tidak terdapat keterangan langsung yang menunjukkan bahawa perayu telah menerima wang tersebut; (iii) tidak terdapat keterangan yang mencukupi untuk menunjukkan mens rea pada pihak perayu; (iv) hakim mahkamah sesyen silap dalam penerimaan dua lagi surat kelulusan daripada Kementerian Kewangan kepada Ferrovic Corp (M) Sdn Bhd dan Pengurus Mulpha Trading Sdn Bhd, yang setarikh dengan surat kelulusan itu, yang juga ditandatangani oleh perayu bagi pihak pegawai yang sama, dan juga dijumpai pada Paramadas, sebagai memudaratkan perayu dan dengan itu melanggar rukun keserupaan fakta; dan (v) mahkamah silap dalam penerimaan suatu kenyataan Paramadas yang butiran materialnya tidak disokong.

Diputuskan, menolak rayuan itu dan mengesahkan hukuman yang dijatuhkan:

(1) Selepas membuktikan bahawa Paramadas ialah seorang 'pegawai awam' mengikut maksud Akta itu and bahawa suapan yang diminta itu telahpun dibayar and diterima oleh Paramadas, adalah tidak perlu untuk pihak pendakwa membuktikan bahawa Paramadas berkeupayaan melakukan perbuatan yang telah direpresentasikan olehnya kepada Evergreen.

(2) Walaupun nampaknya tidak ada keterangan langsung yang membabitkan perayu, tetapi terdapat cukup keterangan ikut keadaan yang mengaitkan perayu dengan Paramadas serta jenayah tersebut. Hakim mahkamah sesyen adalah betul untuk mempertimbangkan bahawa nama perayu terdapat dalam buku alamat Paramadas, pengecaman Paramadas kemudiannya bahawa perayu ialah orang yang bernama 'Khalid' dalam buku alamatnya, bantuan positif yang diberikan oleh perayu dalam penyediaan surat kelulusan itu dan penjumpaan surat kelulusan yang lain pada Paramadas.

(3) Tujuan mengemukakan keterangan keserupaan fakta adalah berjustifikasi dalam kes ini kerana surat kelulusan yang lain adalah relevan dan probatif bagi menunjukkan sistem, dan adalah perlu untuk mematahkan pembelaan pengaitan ikhlas yang mungkin ditimbulkan dan juga pengecaman. Ekshibit tersebut boleh diterima sebagai keterangan kerana nilai probatif mereka melebihi nilai kemudaratan.

(4) Bagi isu mens rea, oleh kerana tidak terdapat keterangan langsung dalam kes ini, kekuatan kesemua keterangan ikut keadaan apabila digabungkan hendaklah diambilkira. Mahkamah berpuas hati bahawa pelbagai keadaan itu menunjuk kepada kesalahan perayu.

(5) Apabila seorang tertuduh bersama memberi keterangan bagi pihaknya sendiri yang membabitkan tertuduh bersama yang satu lagi, tertuduh yang memberikan keterangan tersebut tidak akan dianggap sebagai rakan sejenayah. Oleh yang demikian, sokongan terhadap keterangan Paramadas tidak diperlukan. Walau bagaimanapun, rukun ini hanyalah berkaitan dengan saksi-saksi pihak pendakwa sahaja.]

[*Editorial Note*: The appellant has appealed to the Court of Appeal vide Criminal Appeal No W-09-6-94.]

Notes

For cases on Prevention of Corruption Act (Malaysia), see 4 *Mallal's Digest* (4th Ed) paras 1691–1709; [1989] Mallal's Digest 588–589; [1990] Mallal's Digest 460;[1991] Mallal's Digest 814–815.

For cases on circumstantial evidence, see 7 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 384–405.

For cases on corroboration, see 7 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 526–620.

For a case on similar fact evidence of association, see 7 *Mallal's Digest* (4th Ed, 1994 Reissue) para 1443.

Legislation referred to

Evidence Act 1950 ss 11, 30
Penal Code (FMS Cap 45) s 109
Prevention of Corruption Act 1961 ss 2, 3(a)(ii), 14, 15
Evidence Ordinance (Cap 11) s 25 [Ceylon]

Cases referred to

Anandagoda v R [1962] MLJ 289; [1962] 1 WLR 817 (folld)
Bhimrao Narasimha Hublikar v Emperor AIR 1925 Bom 261 (refd)
Boardman v DPP [1974] 3 All ER 887; [1974] 3 WLR 673 (folld)
Chaube Dinkar Rao AIR 1933 All 513 (refd)
Daud bin Awang Ngah & Anor v PP [1958] MLJ 168 (folld)
Ewin GFL v PP [1949] 15 MLJ 279 (folld)
Indur Dayaldas v State of Bombay AIR 1952 Bomb 58 (refd)

Junaidi bin Abdullah v PP [1993] 3 MLJ 217 (folld)
Khoo Hi Chiang v PP and another appeal [1994] 1 MLJ 265 (folld)
Mahadeo Dannappan Gunaki v State AIR 1952 Bom 435 (refd)
Makin v A-G for New South Wales [1894] AC 57; [1891–4] All ER Rep 24 (folld)
PP v Ong Kok Tan [1969] 1 MLJ 118 (folld)
PP v You Kong Lai [1985] 1 MLJ 298 (folld)
Tan Cheng Seng & Anor v R [1948] MLJ 148 (folld)
R v Cooray (1926) 28 NLR 74 (folld)

Jahaberdeen Md Yunus (*Mohd Shafee Abdullah* with him) (*Shafee & Co*) for the appellant.
Masri Mohd Daud (*Deputy Public Prosecutor*) for the respondent.

Zaleha Zahari JC: One Paramadas a/l Saminathan (the second accused in the court below), a clerk attached to the Department of Inland Revenue was convicted on a charge of corruptly receiving gratification of RM1,300 in cash as a reward for officials of the Ministry of Finance in contravention of s 3(a)(ii) of the Prevention of Corruption Act 1961 ('the Act') and was sentenced to ten months' imprisonment and fined RM5,000 in default four months' imprisonment. He has not appealed.

The appellant, a public officer serving in the Ministry of Finance, was charged and convicted of abetting Paramadas under s 3(a)(ii) of the Act read in conjunction with s 109 of the Penal Code (FMS Cap 45) ['the Penal Code']. The appellant was sentenced to ten months' imprisonment and fined RM7,000 in default six months' imprisonment by the learned sessions court judge on 24 September 1991. The amended charge upon which he was found guilty and convicted is as follows:

> That on or about 5 March 1988, at about 9.20am at the office of Sicura Promotions Sdn Bhd, No 40A, Jalan Jejaka 9, Taman Maluri, Cheras, in the Federal Territory of Kuala Lumpur, one Paramadas a/l Saminathan committed an offence under s 3(a)(ii) of the Prevention of Corruption Act, 1961 (Rev 1971), to wit, did corruptly receive for himself a gratification, to wit, cash RM1,300 from one Kua Chung Sen, as a reward for members of a public body, to wit, officials of Kementerian Kewangan, Malaysia, Kuala Lumpur, for doing something in respect of a certain matter, to wit, for having obtained an approval letter dated 13 February 1988 for registration of Evergreen Horticulture Nursery and Trading Co with the Kementerian Kewangan, Malaysia, Kuala Lumpur as a contractor for supply/service in which the said public body is concerned and that you, between the months of February and March 1988, at Bahagian Pengurusan Kontrak and Bekalan, Kementerian Kewangan, Tingkat 4, Blok 9, Jalan Duta, Kuala Lumpur, abetted the said Paramadas a/l Saminathan [in] the commission of the aforesaid offence which was committed in consequence of your abetment and that you have thereby committed an offence punishable under s 3(a)(ii) of the Prevention of Corruption Act 1961 read with s 109 of the Penal Code.

Paragraph 3 of the petition of appeal lists out seven grounds which, briefly, may be summarized as follows:

A (a) insufficient evidence to prove ingredients of offence;
(b) insufficient evidence to show mens rea on the part of the appellant;
(c) wrongful admission of exhs P17 and P20;
(d) wrongful admission of statement of co-accused which is not corroborated in material particulars;
B (e) wrongful admission of confession of co-accused;
(f) wrongful acceptance of evidence of a co-accused which are contradictory and inconsistent; and
(g) rejection of defence which has raised a reasonable doubt.

C *Whether a prima facie case has been made out*

The cumulative effect of grounds (a)-(f) alleged that a prima facie case had not been made out on an application of the maximum evaluation test as set out by the pronouncement of the Supreme Court in *Khoo Hi Chiang v PP and another appeal* [1994] 1 MLJ 265, that the appellant should have been D acquitted and discharged without his defence being called.

The first ground that calls for determination is, what ingredients must the prosecution prove to establish a prima facie case in a prosecution on a charge under s 3(a)(ii) of the Act.

E The key words of s 3(a)(ii) in the context of the present case are:

> Any person who shall by himself or by or in conjunction with any other person —
>
> (a) corruptly solicit or receive or agree to receive for himself or for any other person;
>
> F ...
> any gratification as an inducement to or reward for, or on account of —
> ...
> (ii) any member, officer or servant of a public body doing ... anything in respect of any matter or transaction whatsoever, actual or proposed or likely to take place, in which the public body is concerned,
>
> G shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding five years or to both.

The terms 'public body' and 'public officer' as enacted by s 2 of the Act mean:

H
> 'public body' includes —
>
> (a) the Government of Malaysia;
> ...
> (c) any department, service or undertaking at the Government of Malaysia or a state;
>
> I 'public officer' includes any person in the permanent or temporary employment of a public body.

The prosecution had adduced evidence, and the sessions court found proven, which decision is not disputed by the appellant, that Paramadas is

a 'public officer' within the meaning of s 2 of the Act by reason of Paramadas serving in the Department of Inland Revenue at the material time.

It would appear that the learned sessions court judge accepted the testimony of SP1, the proprietor of Evergreen Horticulture Nursery (whose application for registration with the Ministry of Finance formed the substance of the charge preferred) that a person named 'Das' solicited gratification of RM1,300 as an inducement or reward to expedite the issuance of the letter of approval of Evergreen's application. She also accepted SP3's evidence (the complainant in this case and the person authorized by SP1 to act on his behalf to effect the said payment of RM1,300 to 'Das'), that the second accused called upon him, identified himself as 'Das' and subsequently made two further visits in respect of payment of the sum solicited.

From the evidence of SP3 and two officers from the Anti-Corruption Agency ('the ACA'), ie SP5 and SP6, the learned sessions court judge accepted and found proved that the gratification solicited had been paid and received by Paramadas. Paramadas was caught 'red handed' with the trap money in his wallet which notes had earlier that morning been handed over by SP14 to SP3.

Having found Paramadas to be a public officer, and payment given and received, the sessions court invoked the s 14 presumption under the Act which reads:

> Where in any proceeding against a person for an offence under section 3 or 4 it is proved that any gratification has been paid or given to or received by a person in the employment of any public body, the gratification shall be deemed to have been paid or given and received corruptly as an inducement or reward as hereinbefore mentioned, unless the contrary is proved.

Counsel for the appellant argues that, besides proving Paramadas to be a public officer and payment paid and received by Paramadas, there is yet another ingredient to be proved by the prosecution. According to him, it was also essential for the prosecution to prove that Paramadas had the ability to perform the act represented as stipulated in the charge, ie to obtain the approval letter for registration of Evergreen with the Ministry of Finance, which ingredient, he submitted, had not been proven.

On this issue, I take note of the decision of Mahadev Shankar J in *PP v You Kong Lai* [1985] 1 MLJ 298. As to what is the proper construction to be given to s 3(a)(ii) of the Act, Mahadev Shankar J ruled:

> The presence of the word 'solicit' in the section, to my mind clearly shows that if a person invites the payment of moneys so that he may allegedly use the same to bribe a member of a public body, he has already committed an offence. The fact that the corrupt purpose was not carried out does not matter.

In making the decision that he did, Mahadev Shankar J took into consideration the following cases:

A The following cases appear to merit special attention. In *Indur Dayaldas v State of Bombay* AIR 1952 Bom 58 it was held that to constitute an offence under s 161 [of the Indian Penal Code] it is not necessary that the act for doing which the bribe is given should actually be performed. It is sufficient if a representation is made that the act has been performed or that it will be performed and a public servant who obtains a bribe by making such B representation, will be guilty of the offence punishable under this section even if he had no intention to perform and has not performed or does not actually perform that act. A representation by a person that he has done or that he will do an act impliedly includes a representation that it was or is within his power to do that act. In other words the act is punishable corruption even if it amounted to cheating by false representation.

C Section161 is of course directed at public servants taking gratification whereas s 3 of the Prevention of Corruption Act [1961] is not so limited.

In *Bhimrao Narasimha Hublikar v Emperor* AIR 1925 Bom 261 it was held that no favour need be shown to the briber as a fact. It was sufficient if he was led to believe that the matter would go against him if he did not give the bribe.

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In *Chaube Dinkar Rao* AIR 1933 All 513, the court was concerned with the effect of ss 107 and 108 of the [Indian] Penal Code which deal with abetment in conjunction with s 161 of the Penal Code. The two accused persons were held liable as abettors of an offence under s 161 with reference to giving a bribe to a judge. The fact that the judge had no guilty intention or knowlege was held to be immaterial. Explanation 2 to s 108 shows that E it is not necessary that the act abetted should be committed and explanation 3 further states that it is not necessary that the person abetted should have any guilty knowledge or intention.

...

... In *Mahadeo Dannappan Gunaki v State* AIR 1952 Bom 435 at p 437 the learned judge stated that:

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> 'The mens rea consists in his intention to give a bribe in order that it may induce the public servant to do or not to do something which he would otherwise not do or do. This state of mind of the person, who offers a gratification, has obviously nothing to do with the question whether the public servant, to whom the gratification is offered, is or is G not in a position to do or not to do the act, for doing or for not doing which the amount is offered to him.'

The Prevention of Corruption Act 1961 is a much wider statute than the provisions contained in ss 161–165 of the [Indian] Penal Code. Section 3 of the Act is not limited to public servants but applies to all persons. It applies equally to a person who receives the gratification on behalf of a public H officer or for himself.

Mahadev Shankar J concluded, on the facts of that case:

> In this case, through the eyes of PW3 the intention obviously was to give a bribe for the renewal of the licence. Everything else being equal he fell I within the four walls of s 3(b) of the Act. The mens rea was there and the absence of any evidence that the DO was *particeps criminis* was irrelevant.

From the evidence of SP1, it is clear that the representation made by Paramadas, that he could perform the act represented, operated on SP1's

mind. SP1 acted under the belief and on the strength of the representation made by Paramadas that he would influence the public officer responsible to approve and expedite the issuance of the letter of approval in respect of Evergreen's application for registration. The modus operandi clearly indicates that Paramadas was acting with the assistance of someone in the Ministry of Finance. Solicitation and payment being proved, I hold that it is not necessary for the prosecution to prove that it was within the power of Das to do the act represented.

I will now consider the contentions of counsel for the appellant that the learned sessions court judge erred in admitting various evidence on the ground that it was inadmissible/prejudicial to the appellant, and the issue of 'mens rea' of the appellant.

On the acknowledgement by Paramadas on exh P6 that, 'all the serial numbers of the money in the list tally with the RM1,300 I received from one Mr Kua', it was contended that this evidence was prejudicial and should not have been admitted. I am of the view that the learned sessions court judge did not err in admitting exh P6 together with Paramadas' acknowledgement. The acknowledgement was relevant and material as corroborative evidence of the testimony of SP3, SP6 and SP7's evidence, that gratification was paid and received by Paramadas.

Counsel stressed that SP1 and SP3's evidence does not implicate the appellant. According to him the issuance of P8, the approval letter from the Ministry of Finance to Evergreen, by itself, does not show that the money received by Paramadas was for someone in the Ministry of Finance. Even accepting that Paramadas received the money, counsel argues, there was no evidence that the money was also for the appellant.

From the judgement of the learned sessions court judge, it would appear that although there was no direct evidence implicating the appellant from the evidence adduced by the prosecution, she found sufficient circumstantial evidence connecting the appellant with Paramadas and the crime. It would appear that she relied on the following:

(a) the appellant's name and office telephone number in Paramadas' address book (exh P13 and P13A) which was recovered by the ACA officers from Paramadas immediately upon Paramadas' arrest at SP3's office;

(b) the subsequent identification by Paramadas to ACA officers of the appellant as the man named 'Khalid' in his address book, P13;

(c) the positive act of assistance by the appellant:

  (i) in personally taking Evergreen's file to the typist for typing although the appellant was then no longer in charge of the said file;

  (ii) after the letter had been typed, in signing the letter typed (exh P8), for and on behalf of the file officer, Azhar bin Ismail, without the file officer's knowledge or permission; and

(d) the recovery of two other letters by ACA officers (exhs P17 and P20) both dated 13 August 1988, also signed by the appellant, from a room occupied by Paramadas and from the drawer of the table occupied by Paramadas in his office at the Department of Inland Revenue, respectively.

The criticism levelled against the taking into consideration of the appellant's name in the address book was on the basis that the appellant was in no position to prevent anyone from inserting his name in any address book, and such evidence should not therefore be considered incriminating.

In determining this issue, I ask myself these questions. Why would Paramadas choose to insert a complete stranger's name into his address book? Why should Paramadas subsequently identify and implicate a complete stranger, as the man named in the address book, unless of course the man is known to him. I am of the view the evidence was certainly significant and the sessions court judge was right in taking into consideration the appellant's name in Paramadas' address book and the subsequent identification of the appellant as the man named 'Khalid' by Paramadas into consideration.

I now turn to ground (c) on the admissibility of exhs P17 and P20 (pp 204 and 207 of the appeal record), ie letters from Ministry of Finance to Ferrovic Corp (M) Sdn Bhd and Pengurus Mulpha Trading Sdn Bhd. It is pertinent to note that P17 and P20 bore the same date as P8, '13 February 1988', and also bore the same signature and signed for and on behalf of the same officer, Azhar bin Ismail. It was contended that those exhibits should not have been admitted as being prejudicial to the appellant, as it tends to show that the appellant has been guilty of criminal acts other than those covered by the charges, as infringing the similar fact rule.

On this issue, I am of the opinion that consideration must not only be given to the similar fact rule in respect of its exclusionary part but also to its inclusionary part. As to its inclusionary part, evidence is admissible if it was relevant to an issue before the court and it may be so relevant if it bears upon the question whether the acts alleged were designed or accidental or to rebut a defence which would otherwise be open to the accused or to support an identification. In *Junaidi bin Abdullah v PP* [1993] 3 MLJ 217, the Supreme Court relied on the principle enunciated in *Makin v A-G for New South Wales* [1891 – 4] All ER Rep 24 as applied locally in *GFL Ewin v PP* [1949] 15 MLJ 279 and *PP v Ong Kok Tan* [1969] 1 MLJ 118. The Supreme Court also referred to the decision of the House of Lords in *Boardman v DPP* [1974] 3 All ER 887; [1974] 3 WLR 673. The Supreme Court ruled:

> On the principle laid down in *Makin*'s case and *Boardman*'s case, we are of the opinion that where the purpose of adducing evidence of similar facts or similar offences is justifiable on ground of relevancy and necessity to rebut any defence which would otherwise be open to the accused (in addition to those under ss 14 and 15 of the Evidence Act) it is admissible in evidence provided the probative value of such evidence outweighs its prejudicial value.

In relation to the crime charged, I am of the opinion that the evidence of P17 and P20 being in the possession of Paramadas was vital to the prosecution and relevant under s 11 of the Evidence Act 1950. The evidence is relevant and probative as showing system, and to rebut a possible defence of innocent association as well as identification. I am of the view that the probative force is sufficiently great to make it just to admit the evidence. Its probative value outweighs its prejudicial value. Its existence throws light on the probabilities of the case and forms a further link in the chain of proof.

On the point that mens rea of the appellant has not been proven, it has often been observed, it is difficult, if not impossible, to procure direct evidence to prove the intention of an individual; in most cases it has to be inferred from his act or conduct or other relevant circumstances of the case.

In cases like this, where the evidence is circumstantial, what has to be considered is to consider not only each individual piece of evidence but the combined strength of these strands when twisted together, whether the various circumstances to which they spoke pointed irresistibly in one direction and one direction only, the direction being the appellant.

When the evidence of the prosecution is critically tested against the totality of the evidence and with the probabilities of the case, I hold that the learned sessions court judge was right in concluding that there was circumstantial evidence of a cogent nature connecting the appellant with the crime. Common sense rules out the presence of the appellant's name in P13 as mere coincidence and the recovery of two other letters signed by the accused P17 and P20 provides a further link to the appellant's involvement. The appellant played his part by his involvement in causing the letter P8 to be expeditiously prepared and signing the same although the file was not within his portfolio. I hold the various circumstances to which they spoke pointed irresistibly in one direction, and one direction only, being the guilt of the appellant.

On the attack of admissibility of statements made by Paramadas to the ACA officers by reason of the caution not being properly administered, it is clear from the evidence of SP6 that consequent upon arrest, he not only read the caution as provided for under s 15 of the Act but also explained the said caution to Paramadas and asked him whether he understood it, to which, Paramadas acknowledged that he did.

As to the complaint that the statements by Paramadas, in so far as they implicated the appellant, were hearsay and should not be admitted, I am of the view that the evidence could be admitted as to the conduct of Paramadas and not as to the truth of the statements Whatever statements Paramadas made to SP6 and SP7 were admitted, not for the purpose of establishing the facts alleged but to show the state of mind and conduct of Paramadas and to draw inferences therefrom.

With regard to grounds (d) and (e), the contention that the statements made by Paramadas were wrongly admitted in evidence as they constituted a confession by Paramadas implicating the appellant, of which its

A voluntariness has not been proven, and that it has not been corroborated in material particular, I hold them to be of no merit and substance for the following reasons.

The meaning to be attributed to the word 'confession' was considered in *Anandagoda v R* [1962] MLJ 289; [1962] 1 WLR 817 where the Privy B Council held that the correct meaning to be attributed to the word 'confession' in s 25 of the Evidence Ordinance (Cap11) (Ceylon) was that taken by Gavin ACJ in *R v Cooray* (1926) 28 NLR 74 at p 79:

> The term 'admission' is the genus of which 'confession' is the species. It is not every statement which suggests any inference as to any fact in issue or C relevant fact which is a confession, but only a statement made by a person accused of an offence whereby he states that he committed that offence or which suggests not any inference but the inference that he committed that offence.
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> ...
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> The test whether a statement is a confession is an objective one, whether to the mind of a reasonable person reading the statement at the D time and in the circumstances in which it was made it can be said to amount to a statement that the accused committed the offence or which suggested the inference that he committed the offence. The statement must be looked at as a whole and it must be considered on its own terms without reference to extrinsic facts.
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> ... E
>
> The appropriate test in deciding whether a particular statement is a confession is whether the words of admission in the context expressly or substantially admit guilt or do they taken together in the context inferentially admit guilt?

SP7's testimony when Paramadas was questioned how he got P8, was as F follows:

> Tentang surat daripada Kementerian Kewangan, dia beritahu yang dia dapati surat daripada Encik Khalid yang bekerja di Bahagian Kontrak, Kementerian Kewangan. YT2 juga memberitahu kami yang wang RM1,300 itu adalah dimaksudkan untuk Encik Khalid dan Encik Khalid akan G memberi RM100 atau RM200.

A reasonable person reading the statement would conclude that, far from admitting guilt, Das is denying liability of any wrongdoing. Whilst admitting that he did receive the money, he was saying that he was only a collecting agent in respect of which he would receive some payment for the service H that he rendered.

Applying the test referred to above, I am of the opinion it cannot be concluded that the statement made by Paramadas amounts to a statement that Paramadas committed the offence or which suggests the inference that he committed the offence and falling within the meaning of the word 'confession'. In these circumstances, I am of the view that the submission I of counsel as to the application of s 30 of the Evidence Act 1950 to the appellant is without merit and substance.

As to the submission of counsel for the appellant that the learned sessions court judge erred in accepting the uncorroborated evidence of

Paramadas, a co-accused, it may be pertinent to note the decision of the Court of Appeal in *Daud bin Awang Ngah & Ors v PP* [1958] MLJ 168. In that case, the Court of Criminal Appeal relied on the judgment of the Singapore Court of Criminal Appeal in *Tan Cheng Seng & Anor v R* [1948] MLJ 148 where it was held that a co-accused giving evidence on his own behalf against a co-accused was not to be regarded as an accomplice and therefore the rule regarding corroboration did not apply. They clearly laid down that the rule only applied to witnesses for the prosecution.

I have also considered ground (f) and consider the inconsistencies pointed out to be minor, not affecting the value of the testimony of witnesses.

On an application of the maximum evaluation test as laid by *Khoo Hi Chiang v PP* [1994] 1 MLJ 148 at the end of the prosecution case, I hold that the learned sessions court judge was right in holding that the prosecution had established the charge against the appellant beyond all reasonable doubt. The learned sessions court judge was right in calling for the defence.

The defence

The only question left for me to consider is whether the defence put up by the appellant could reasonably be true. The learned sessions court judge after carefully considering the defence of the appellant, for the reasons given in the judgment, held the explanation of the appellant to be not only improbable but unreasonable and inconsistent with innocence. The cogent evidence all points to the appellant as the officer in the Ministry of Finance with whom Paramadas was involved as a participant in the offence committed. The learned sessions court judge rejected Paramadas' defence of being a mere innocent tool in the hands of the appellant, that he was merely used by the appellant to deliver the letter. I am perfectly satisfied that Paramadas had been rightly convicted. I see no reason at all to disagree with the learned sessions court judge's findings.

Having considered the whole of the arguments put forward before me and the evidence on record which I have carefully reviewed, I hold that there is no merit whatsoever in the appeal against the conviction. As for the appeal against sentence I am of the view that the sentence of ten months' imprisonment and fine of RM7,000 imposed in default six months' was appropriate and sufficiently deterrent to any public officer who would venture to obtain a bribe. The appeal against sentence is therefore also dismissed.

Order accordingly.

Reported by Isabel Liong